

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

DECEMBER 20, 2006

A regular meeting of the Commission for Human Rights was held in the agency conference room on Thursday, December 20, 2006. Present at the meeting were Commissioners Alton W. Wiley, Camille Vella-Wilkinson and Iraida Williams. Absent were Commissioners Dr. John Susa, Alberto Aponte Cardona, Alton W. Wiley, Jr., Jean Stover and Randolph Lowman. The acting Chairperson called the meeting to order at 3:05 p.m.

A motion to approve the November 30, 2006 minutes was made by Commissioner Williams. The motion was seconded by Commissioner Wiley and carried. Commissioner Vella-Wilkinson left the meeting at 3:10

Status Report: Michael D. Évora, Executive Director-

A written report was handed out. All new information will be in bold print.

Case Production Report - Attached

AGED CASE Report - Attached

Outreach Report - Attached

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: No report

OUTREACH: No report

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STATUS REPORT - LEGAL COUNSEL, Cynthia M. Hiatt and Francis Gaschen

LITIGATION: Report attached.

LEGISLATION: No discussion at this time.

REGULATIONS: No discussion at this time.

HEARING SCHEDULE: Discussed

DECISIONS: No discussion at this time.

The meeting adjourned at 3:25 pm. The next regular meeting of the Commission is scheduled for Thursday, January 25, 2007 at 9:00 am.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

**Notes taken by: B. Ross
EXECUTIVE DIRECTOR'S**

REPORT TO COMMISSIONERS

DECEMBER 20, 2006

I. BUDGET

On September 8, 2006, I submitted the Commission's FY 2007 Revised and FY 2008 Budget Requests to the Governor. The particulars are as follows:

	FY 2007	FY 2007	FY 2008
	(Enacted)	(Revised)	(Request)
State	1,027,775	1,038,846	936,493
Fed.	323,478	286,550	311,111
Total	1,351,253	1,325,396	1,247,604

II. FEDERAL CONTRACTS

EEOC – For federal FY 2007 as of 11/30/06, according to EEOC Project Director Marlene Toribio, we have closed 42 cases. We will not receive our FY 2007 contract until February-March 2007.

HUD – For FY 07, according to HUD Project Director Angela Lovegrove, we have taken in 18 new housing charges, 17 of which are co-filed with HUD. Within this same time period, we have processed

17 housing charges, 15 of which were co-filed with HUD.

III. PERSONNEL

Allison Cote, Sr. Compliance Officer, remains out of work on full Worker's Compensation. Her return date is uncertain.

Tina Christy, Sr. Compliance Officer, is on FMLA leave. She is expected to return to work in January 2007.

IV. OUTREACH – Refer to attached report.

V. GENERAL STATUS

●Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.

●Case Closures – Refer to attached report.

●Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 86% in FY 2006 (from 14 to 2 cases).

●Commissioner (Re)Appointments – General Assembly remains on recess. Commissioner Susa’s reappointment and Rochelle Lee’s (Gov. Carcieri’s nominee) appointment remain unaddressed. As agreed at November’s Commissioners’ meeting, I contacted Christine DiFilippo (Governor’s Office) on November 30 regarding (re)submission of the names of Cmsr. Susa, Cmsr. Vella-Wilkinson and Ms. Lee for consideration by the Senate in January. Ms. DiFilippo said she was certain that the Governor would want to resubmit Ms. Lee’s nomination; she also indicated that the Governor would submit the names of Cmsr. Susa and Cmsr. Vella-Wilkinson for reappointment. We further discussed the need for a replacement for Cmsr. Lowman. I referred Ms. DiFilippo to the previously submitted résumés of Nancy Kolman and Gloria Hole, former Commission employees who have expressed interest in serving as Commissioners.

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. That number has steadily decreased. We ended FY 06 with 387 cases in inventory. As of 12/19/06, we had a total of 369 cases in inventory.

●Annual Report – Susan Pracht and I are working on the Commission’s FY 2006 Annual Report. We expect to have a draft at the end of this week, with the goal of submitting it to the printer by the end of December.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: December 20, 2006

Recent developments are in bold.

Aquidneck Island v. RIHCR, et al.

This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale. RIHCR's lien was placed against Cardinale not Aquidneck so I think we are all set. I advised plaintiff's attorney of this fact. Discovery is ongoing.

Babbitt v. Crescent Park Manor, et al.

The Commission filed a motion to intervene as a party plaintiff in this case. Plaintiff's counsel had no objection to the motion. The motion was granted. Discovery has commenced. Discovery is ongoing.

Bagnall v. RICHR and WLWC et al.

The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. The parties are circulating a briefing stipulation.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. The parties and the Commission filed briefs. The case was assigned to Judge Savage. Judge Savage held a status conference with the attorneys, including Commission counsel, on January 21, 2005. Judge Savage indicated that she was close to issuing a decision but wished to give the parties an opportunity to discuss resolution. After a number of settlement attempts, it did not appear that resolution was near. On 1/4/06, I wrote a letter to the parties stating that if I did not hear from them by 2/6 that the case was close to resolution, I was planning to write Justice Savage to ask her to issue her decision. Not having heard from the parties, on 2/8/06, I wrote Justice Savage and asked her to render her decision as it did not appear to me that the parties would resolve the matter. CMH drafted a letter asking Justice Savage to consider issuing a decision in the near future because of Mrs. Gaffney's age. It was sent to the complainant's attorney on 8/29/06 so that it could be signed by him and Commission counsel. CP's attorney had not responded as of 11/29/06. Commission counsel called both attorneys on 11/20/06 and 11/29/06. Commission Counsel was informed that the complainant's counsel would be out of the office for a significant period of time. Respondent's attorney did not

want to join in the letter. The letter to the Judge was mailed on 11/30/06 without participation by the other parties.

Horn v. Southern Union Co.

This is a case filed in federal District Court in Rhode Island. Judge Smith certified a question to the Rhode Island Supreme Court: What is the statute of limitations for the Rhode Island Civil Rights Act, Title 42, Chapter 112 of the General Laws of Rhode Island (RICRA). The RICRA prohibits discrimination in contracts, including discrimination in employment contracts. The Commission has agreed to join an amicus brief that will argue that the proper statute of limitations is three years. (There is an argument that the statute of limitations is one year.)

Idowu v. Rhode Island Commission for Human Rights and Cohoes Fashions of Cranston, Inc.

The complainant appealed the Commission Decision and Order. The respondent filed a motion to dismiss the appeal on the grounds that it was filed too late. The Commission filed the administrative record on May 17, 2006. Hearing on the respondent's motion to dismiss was held on June 6, 2006. Judge McGuirl appeared to be ready to rule for the defendants, but offered Mr. Idowu the opportunity to submit more information. He accepted the offer. He retained an attorney who filed a last-minute objection to the motion to dismiss and appeared at the hearing on July 11, 2006. On this date, Judge McGuirl appeared to

see the merit of complainant's argument that, even though the decision was dated, the decision did not specifically say that the date was the mailing date. (A party must appeal within thirty days of the mailing date.) However, she did not seem to feel that the document that the complainant filed within thirty-one days of the mailing date was sufficient to constitute a complaint. She will consider the matter and issue a decision on the motion to dismiss from the bench at a later date.

Joint v. DeMarkey and Rhode Island Commission for Human Rights

The individual respondent filed an appeal of the Commission Decision and Order and the Decision on attorney's fees. The briefs were filed. Special Magistrate Joseph Keough rendered a decision on September 22, 2006. He held for the Commission on several procedural issues, but reversed the decision, holding that the complainant had not proved sex discrimination. The Decision held that the respondent had waived his right to raise the issue that the charge was not timely filed. It held that the Commission complaint had given the respondent sufficient notice of the charges against him. Magistrate Keough overturned the Commission determination that the respondent had discriminated against the complainant because of her sex, holding that it is not sex discrimination if a supervisor terminates an employee because their voluntary sexual relationship has ended. Ms. DeMarkey's attorney and the Commission filed a Petition for Certiorari and Memorandum with the Rhode Island Supreme Court. In the meantime, Mr. Joint's attorney filed a Motion

for Attorney's Fees, asking that the Superior Court order the Commission to pay Mr. Joint's attorney's fees under the Equal Access to Justice Act. The parties agreed that the Motion on Attorney's Fees could pass until the Supreme Court acted on the Petition for Certiorari. The parties have also agreed that the Commission will delay discovery, on the issue of Mr. Joint's eligibility to claim attorney's fees, until after the Rhode Island Supreme Court has acted on the Petition. Mr. Joint filed for an extension of time to file his objection to the Petition for a Writ of Certiorari. Mr. Joint has filed for another extension of time to file his objection.

King v. City of Providence Police Dept.

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court. Ms. Hiatt has been subpoenaed to testify at the trial. Mr. King received another continuance on the grounds of his health. In the next few weeks, his counsel will be seeking agreement on a new trial date

Laboy v. Stat Health Services

Counsel is trying to locate respondent's officers in order to ensure compliance with the Commission Decision and Order.

Moniz v. Norris

This charge was withdrawn after a settlement was agreed to by the parties. The Respondent in the charge is the plaintiff here, and commenced an action to evict the defendant. Angie was subpoenaed to testify regarding the settlement. Case settled prior to trial.

Ponte v. GTECH

The plaintiff filed a records subpoena for her case file, several named case files and any other disability charges against GTECH. The Commission provided copies of the complainant's cleared file. The Commission objected to providing any other records on the grounds that such dissemination would violate the Health Care Confidentiality Act and that redaction of the health care information would be burdensome. The motion of the plaintiff was granted, subject to substantial conditions for the Commission. Still waiting for the Order to be signed so Commission can send out notice.

RICHR and Rossi v. Attruia

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-29-05. Judgment entered against Defendant. Payments on the judgment have been made on schedule.

RICHR and Martin v. Cardinale

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed. Temporary Restraining Order entered against defendant. Waiting for compliance with discovery requests.

RICHR and Powell v. Cinotti

The respondent elected to have this housing matter resolved outside of the Commission. Suit was filed on behalf of the complainant. An offer of compromise has been made by respondents and accepted by Powell. Case settled; waiting for paperwork from Respondent.

RICHR and Scurry v. C & H Investments, et al.

The defendants were defaulted and judgment entered. RI Judgment has been recorded in FL courts. Case settled; waiting for paperwork from FL counsel. Waiting for proceeds from FL counsel.

RICHR and Lovegrove v. Escolastico

Default was entered against the defendant. Judgment was obtained and sent to FL lawyer for collection. FL atty. is moving to have FL courts give full faith and credit to the decision of our Superior Court.

RICHR and Butler v. Kong

The complainant elected to have this housing matter resolved outside of the Commission. AG refused to take case because of lack of cooperation from complainant. Suit was filed on behalf of the complainant and service will be effectuated shortly.

RICHR and Morin v. Teofilo Silva, et al.

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-24-05. Service of the complaint will be made once respondent can be located. Motions for extended time within which to serve and for special service were filed. The motions were granted. Service has not been perfected yet.

RICHR and Zeigler v. Laura Sitrin, Finance Director of the City of Newport

Case resolved. Commission must annually monitor City training.

RICHR v. Warner, et al.

Superior Court action filed on behalf of RICHR as complainant declined to sue. Case settled. Awaiting final documentation.

South Kingstown School Committee et al. v. Stephen Alberghini and the Rhode Island Commission for Human Rights

The respondents have appealed the Commission Decision and Order.

The parties have agreed that the Commission will delay filing of its record until motions pending before the Commission have been decided.

Tucker v. Blue Cross

The complainant filed an administrative appeal of the Commission's finding of no probable cause. The administrative record was filed in

Court.